Calendar No. 331

98TH CONGRESS *1st Session*	SENATE	REPORT No. 98-214

REAUTHORIZATION OF THE OFFICE OF FEDERAL PROCUREMENT POLICY

REPORT

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 1001

TO AUTHORIZE APPROPRIATIONS FOR THE OFFICE OF FEDERAL PROCUREMENT POLICY FOR AN ADDITIONAL 5 YEARS

SEPTEMBER 1, 1983.—Ordered to be printed

Filed under authority of the order of the Senate of AUGUST 4 (legislative day, AUGUST 1), 1983

U.S. GOVERNMENT PRINTING OFFICE

23-733 O WASHINGTON : 1983

5403-9

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CONTENTS

		Page
I.	Purpose	1
II.	History	1
III.	Background and Need for Legislation	4
IV.	Performance of the OFPP	6
V.	Provisions of S. 1001	13
VI.	Conclusion	22
VII.	Section-by-Section Analysis	22
VIII.	Estimated Cost of Legislation	26
IX.	Evaluation of Regulatory Impact	27
X.	Committee Vote	27
XI.	Changes in Existing Law	28

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Mr. COHEN, from the Committee on Governmental Affairs, submitted the following

REPORT

[To accompany S. 1001]

The Committee on Governmental Affairs, to which was referred the bill (S. 1001) to authorize appropriations for the Office of Federal Procurement Policy for an additional 5 years, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

I. PURPOSE

The purpose of S. 1001, the Office of Federal Procurement Policy Act Amendments of 1983, is to improve the management of the federal procurement process by strengthening the OFPP and extending its authorization for 5 years.

II. HISTORY

The establishment of a central procurement policy office in the Executive branch was the first of 149 recommendations made by the Commission on Government Procurement in its December 1972 report to Congress. The Commission, which was created by Congress in 1969 (Public Law 91-129) to study the federal procurement process, based its primary recommendation on the rationale that "effective management of the procurement process requires a high

degree of direction and control of basic policy." The Commission recommended that Congress:

> Establish by law a central Office of Federal Procurement Policy in the Executive Office of the President, preferably in the Office of Management and Budget, with specialized competence to take the leadership in procurement policy and related matters. If not organizationally placed in OMB, the office should be established in a manner to enable it to testify before committees of Congress. It should develop and persistently endeavor to improve ways and means through which executive agencies can cooperate with and be responsive to Congress.

Without a central procurement policy office, the Commission found there was a void in policy leadership. As a result, procurement policies and procedures were needlessly diverse; there was no central office in the Executive branch prepared to provide the Congress with recommendations for improving the procurement process, and there was no arbiter to reconcile agency disagreements on procurement policy. For these reasons, the Commission recommended that a central procurement policy office—independent of any agency having procurement responsibility, empowered with directive rather than merely advisory authority, responsive to Congress, and consisting of a small, highly competent cadre of seasoned procurement experts—was urgently needed.

The Congress deferred implementation of the Commission's recommendation in order to provide the director of the Office of Management and Budget [OMB] and the heads of the procuring agencies an opportunity to establish—administratively—a central procurement policy office, which would have eliminated the need for a statutory OFPP. By 1974, the Congress recognized that voluntary coordination between the OMB and the procuring agencies was not working and passed the Office of Federal Procurement Policy Act (Public Law 93-400). The Act established the Office within the OMB for five years to provide overall direction of procurement policy. The Administrator for Federal procurement Policy, who is subject to Senate confirmation, was authorized under the 1973 Act to prescribe policies, regulations, procedures and forms which the executive agencies were required to follow. Such directive authority, instead of more limited authority to issue policy guidance, was one of the primary attributes of the Office recommended to Congress by the Commission. Having been granted this stronger directive authority, however, the OFPP was statutorily prohibited from interfering in the daily management of an agency's procurement operations, which properly is the responsibility of an agency's procurement officials.

The OFPP was reauthorized in 1979 for an additional four years with the enactment of the Office of Federal Procurement Policy Act Amendments (Public Law 96-83). While Congress maintained the OFPP's fundamental responsibility to promote economy, efficiency, and effectiveness in the federal procurement process, the authority available to the Administrator to discharge this responsibility was substantially weakened as a result of the 1979 amendments. Public Law 96-83 revoked the OFPP's regulatory authority,

thereby restricting its authority to issuing Government-wide policy directives. As a supplement to this more restricted policy directive authority, the Director of the OMB was authorized to deny the promulgation of or rescind any agency rule or regulation which was inconsistent with any OFPP policy directive. The prevailing belief in Congress was that the OFPP had lost sight of its principal goal of fashioning the framework for a system to improve federal procurement. The thrust of the 1979 amendments, therefore, was to direct the OFPP to focus its resources on the development of a comprehensive proposal for a Uniform Federal Procurement System [UFPS].

In addition to this long-term project, which was completed and submitted to Congress in February 1982, Public Law 96-83 assigned the following functions to the Administrator: (1) reviewing the Commission's recommendations to determine those which should be completed, amended or rejected, (2) developing a system of simplified and uniform procurement policies, regulations, procedures and forms, (3) establishing criteria and procedures for soliciting the viewpoints of interested parties in the development of such policies, regulations, procedures and forms, (4) promoting and conducting research in procurement through the Federal Acquisition Institute, (5) establishing, through the Federal Procurement Data Center, a computer-based information system for collecting, developing, and disseminating procurement data, (6) recommending and promoting, through the Federal Acquisition Institute, programs of the Office of Personnel Management and executive agencies for recruitment, training, career development, and performance evaluation of procurement personnel, (7) developing, for inclusion in the UFPS, standard contracts and contract language, and (8) providing leadership and coordination in the formulation of Executive branch positions on legislation relating to procurement.

Since its creation in 1974, the OFPP has been a small agency within the Office of Management and Budget. Section 410 of the OFPP Act, as amended in 1979, authorizes $4 million annually for the Office for fiscal years 1980 through 1983. The budget and staff levels of the OFPP for these years has been as follows:

	Budget level (millions)	Staff positions
Fiscal year:		
1980	$2.9	45
1981	2.6	42
1982	2.4	41
1983	2.5	41

Given the breadth of the OFPP's mission and its limited resources, the Office must work primarily through executive agents or interagency committees in fulfilling its policy and program responsibilities. For example, the General Services Administration serves as executive agent to the Administrator for Federal Procurement Policy in providing for the Federal Procurement Data Center. OFPP professional staff act as project managers, coordinating the efforts of groups of agency procurement professionals. The OFPP

staff is also supplemented, from time-to-time, by policy experts detailed from the executive agencies to participate in specific policy improvement programs. The benefits of this mode of operation, according to the "Activities of the Office of Federal Procurement Policy" report (October 1980–December 1982), are that (1) OFPP focuses on Government-wide policy matters in lieu of agency-unique policies and procedural details, (2) current field experience is available in the early policy formulation stage, and (3) agencies are aware of, and involved in, OFPP's policy development efforts.

III. Background and Need for Legislation

The statutory authorization for the Office of Federal Procurement Policy expires on September 30, 1983. The Committee on Governmental Affairs has evaluated the Office for more than a year and has considered options for its reauthorization.

In the 97th Congress, the Subcommittee on Federal Expenditures, Research and Rules, chaired by Senator John C. Danforth, held a hearing on May 5, 1982, to consider the Administration's proposal for a Uniform Federal Procurement System. The purpose of this hearing was not only to evaluate the UFPS, but to discuss the prospects of the impending OFPP reauthorization. The Subcommittee heard testimony from Donald E. Sowle, Administrator for Federal Procurement Policy, and a panel of former OFPP Administrators consisting of Hugh E. Witt, Lester A. Fettig, and Karen Hastie Williams. Industry witnesses included Franz O. Ohlson, vice president of the Aerospace Industries Association of America, Inc. and Vico E. Henriques, president of the Computer and Business Equipment Manufacturers Association. Written statements were submitted by other interested groups.

In the 98th Congress, Senators William S. Cohen and William V. Roth, Jr. introduced S. 1001, legislation to reauthorize the OFPP for an additional five fiscal years, on April 7, 1983. The bill was referred to the Committee on Governmental Affairs and subsequently to its Subcommittee on Oversight of Government Management, which assumed jurisdiction over procurement issues at the beginning of the 98th Congress.

S. 1001, as introduced, represented the Committee's starting point in its consideration of the OFPP reauthorization during this Congress and served as the basis for discussion during the Oversight Subcommittee's hearing on April 27, 1983. The Subcommittee heard testimony from Senator Lawton Chiles, Joseph R. Wright, Deputy Director of the Office of Management and Budget, Donald E. Sowle, Hugh E. Witt, representing the U.S. Chamber of Commerce, Professor John Cibinic, Jr., of the George Washington University National Law Center, Robert D. Wallick and O. S. Hiestand, representing the Public Contract Law Section of the American Bar Association, and Lester A. Fettig.

In addition, the Oversight Subcommittee solicited views and received over 35 responses from procuring agencies, contracting associations, former members of the Commission on Government Procurement and other procurement experts on the following issues:

Should the OFPP be reauthorized? If so, for how many years?

Should the OFPP's present authority, as provided in the 1979 amendments to the OFPP Act, be extended?

Should the OFPP have regulatory authority, as originally provided in the 1974 OFPP Act?

Should the OFPP have testing authority, as provided in the proposed UFPS, to engage in innovative procurement techniques?

Are there other authorities which the OFPP should have?

Should Congress codify agency management responsibilities as prescribed in Executive Order 12352?

Has the OFPP been able to function effectively in fulfilling its statutory mandate?

Senator Cohen, chairman of the Oversight Subcommittee, also requested the General Accounting Office to conduct a study on federal procurement reform and the OFPP's role in the process. The GAO submitted its report, entitled "Progress of Federal Procurement Reform Under Executive Order 12352" (PLRD-83-88), on June 17, 1983, a draft of which was made available for the Oversight Subcommittee's April hearing.

On July 25, 1983, the Oversight Subcommittee adopted a substitute for S. 1001, incorporating several of the recommendations of the procurement experts with whom the Subcommittee consulted. The substitute restores regulatory authority to the Administrator of the OFPP, codifies the agency management responsibilities included in Executive Order 12352, establishes the OFPP's leadership role in the development of agency procurement systems, provides authority for the testing of innovative procurement methods, transfers the Federal Acquisition Institute from the OFPP to the General Services Administration, and requires the OFPP to undertake studies on the feasibility of Government-wide debarment and suspension procedures for recipients of federal grants and on the extent of competition among subcontractors. The Subcommittee substitute retains the provision of S. 1001, as introduced, which reauthorizes the Office for an additional five years but increases the authorization level from $4 million to $5 million annually.

The Governmental Affairs Committee voted 13 yeas to 0 nays to report S. 1001, as amended by the Subcommittee substitute, on August 1, 1983.

Based on the Committee's evaluation of the OFPP's performance, the testimony provided by witnesses at the May 1982 and April 1983 hearings, the letters received in response to the Oversight Subcommittee's questionnaire, and the GAO's recommendations in its June 1983 report, the Committee strongly believes that the need for a central procurement policy office is even greater today than when the Commission first recommended that such an office should be established over ten years ago. The dollar value of Government contracts has almost tripled during this past decade—from $57.5 billion in fiscal 1972 to $158.9 billion in fiscal 1982—with over 130,000 federal employees now involved in the procurement process. The magnitude and budgetary significance of Government contracting, alone, mandate the existence of a strong central procurement policy office. Although there are not direct savings associated with the establishment of an OFPP, the potential for savings as a result of the impetus the Office provides to the implementation of basic procurement reforms is almost unlimited.

IV. Performance of the OFPP

The Committee found from its own experience working with the OFPP and from the testimony and other views presented that the Office has performed well since the 1979 reauthorization, considering its limited authority. There is a strong consensus within the procurement community, however, that there is room for improvement in the OFPP's performance. The following excerpts from the April 27, 1983, hearing and letters received in response to the Oversight Subcommittee's questionnaire reflect this view:

> Prior to 1979, OFPP was able to make significant progress with respect to fulfilling its mandate to serve as policy initiator, implementor and director. Since 1979, however, the absence of regulatory authority and the lessening of support from the Director of OMB has made it more difficult for OFPP to be assertive and to be respected by the principal agencies. (Karen Hastie Williams, former Administrator for Federal Procurement Policy; letter to Senator Cohen, April 19, 1983)

> Although the OFPP has performed some of its undertakings successfully, it has never achieved the role of leadership envisioned for it by the Commission on Government Procurement and the Congress * * *. In my opinion, the low point was reached in 1979, when, based on an appraisal that the Office had lacked focus and direction in its initial authorization period, Congress concluded that its regulatory authority should be taken away and that the office should be directed to devise a Uniform Procurement System. An already weak OFPP never recovered from this drastic surgery. (Professor John Cibinic; statement before the Oversight Subcommittee, April 27, 1983)

> Within the restraints imposed by the 1979 reauthorization Act, OFPP has done a remarkable job in keeping the FAR project alive, in getting Executive Order 12352 issued, and in maintaining discussions and explorations of sound procurement policies. The elimination of OFPP's directive authority * * *, however, has downgraded the stature of the Office, both inside and outside the Government. (Robert Evans, Governmental Affairs Director of the American Bar Association; letter to Senator Cohen, April 12, 1983)

> In view of its limited authority, we feel OFPP has functioned effectively in accomplishing its legislative mandate. * * * We believe considerable progress has been made by OFPP since its establishment in 1974. However, if such progress is to continue during the implementation of major reform efforts over the next several years, we think the leadership role of OFPP needs to be strengthened if this organization is to function more effectively. (Richard Hite, Deputy Assistant Secretary—Policy, Budget and Administration, Department of the Interior; letter to Senator Cohen, April 21, 1983)

> [The 1979 amendments to the OFPP Act] relegated the OFPP to a position in which sources both inside and outside the Government consider the Office "second class." The imposition of these restraints in no way concur with the recommendations and responsibilities envisioned by the Commission which are firmly and distinctly stated in the first recommendation of the Report—"This Office was to operate on a plane above the procurement agencies and have directive rather than merely advisory authority." The present statute is not conducive to fostering the objectivity, innovation and relationships needed to provide the overall improvements in the procurement process. (Paul W. Beamer, former Commissioner on the Commission on Government Procurement; letter to Senator Cohen, April 20, 1983)

> Given the breadth and diversity of Government agencies, the OFPP has been effective in fulfilling its fundamental mandate within the scope of its limited authority. We do not believe that OFPP has had the opportunity and support to achieve its full potential. Not all of the criteria established by the Commission have been present at all times. Nonetheless, the OFPP has vigorously pursued implementation of many of the recommendations issued by the Commission on Government Procurement. The OFPP has provided guidance and leadership to the procurement community at the highest levels of the Executive branch. (Wallace H. Robinson, Jr., President of the National Security Industrial Association; letter to Senator Cohen, May 4, 1983)

The OFPP has devoted considerable resources since its 1979 reauthorization to the establishment of a single system of Government-wide procurement regulations, known as the Federal Acquisition Regulation system, the development and submission of a proposal for a Uniform Federal Procurement System, and the issuance and implementation of procurement reforms under Executive Order 12352.

A. ESTABLISHMENT, DEVELOPMENT AND MAINTENANCE OF THE FEDERAL ACQUISITION REGULATION SYSTEM

The OFPP initiated the Federal Acquisition Regulation [FAR] project in January 1978 and has provided policy oversight and assistance throughout its development. This project is designed to establish a regulatory system which will curb what the Commission characterized as "a burdensome mass and maze of procurement and procurement-related regulations." The Commission found that the proliferation of procurement regulations was one of the most pervasive problems affecting procurement and recommended in its 1972 report to the Congress that the present regulations should be consolidated to:

> Establish a system of Government-wide coordinated, and to the extent feasible, uniform procurement regulations under the direction of the Office of Federal Procurement

Policy, which will have the overall responsibility for development, coordination and control of procurement regulations.

The FAR system, once established, will consolidate the Defense Acquisition Regulations, the Federal Procurement Regulations, the National Aeronautics and Space Administration Procurement Regulations and all supplemental agency regulations into one system consisting of a single Government-wide procurement regulation, applicable to all procuring agencies, with such supplemental regulations essential to meet agency-specific needs. The FAR is scheduled to be published as Chapter 1 in a new title of the Code of Federal Regulations, Title 48, with each agency assigned a subsequent chapter in Title 48 for any required implementing and supplementing regulations.

Completion of the FAR, however, has been a problem. Originally, the FAR was to be published in the spring of 1980. Executive Order 12352 directed the Department of Defense [DOD], General Services Administration [GSA] and National Aeronautics and Space Administration [NASA] to continue their joint efforts to issue the FAR and called for its completion by the end of 1982. Under an August 1982 Memorandum of Agreement [MOA] between the DOD, GSA and NASA, the effective date was moved to October 1, 1983. On March 15, 1983, the three agencies signed a joint letter establishing September 30, 1983, as the target date for publication of the FAR in the Federal Register and extending the effective date of the FAR to April 1, 1984. To avoid any further slippages in FAR implementation, the Director of the OMB has invoked the authority of the Paperwork Reduction Act of 1980 (Public Law 96–511), empowering the Office of Information and Regulatory Affairs [OIRA] to rescind unapproved procurement regulations placing a paperwork burden on the public. As announced in the Federal Register on May 11, 1983, OIRA intends to disapprove the collection of information from the private sector under any procurement regulation other than the FAR after April 1, 1984. Although a circuitous route, the OMB's use of the Paperwork Reduction Act authority makes the April 1, 1984, effective date more than another "milestone."

The proposed FAR system also addresses future maintenance, once the system is established. Revisions to the FAR are to be prepared and issued through the coordinated action of two procurement regulatory councils, the Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council, with the assistance of a FAR Secretariat. Responsibility for considering revisions to the FAR is to be apportioned by the two councils so that each council will have cognizance over specified parts or subparts of the FAR. With the assistance of the FAR Secretariat, the cognizant council will be responsible for soliciting public comments on proposed revisions and for considering all such comments. Proposed revisions prepared by one council are to be submitted to the other council for approval.

The proposed FAR system leaves unclear, however, what will happen in the event of a dispute between the two regulatory councils. Executive Order 12352 states that the OMB, through the OFPP, shall "facilitate the resolution of conflicting views among

those agencies having regulatory authority with respect to Government-wide procurement regulations." The GAO does not believe, however, that the Administrator for Federal Procurement Policy, without regulatory authority, is in a position to resolve agency differences. According to the June 1983 GAO report, "this could result in a proliferation of supplemental agency procurement regulations which are independently maintained."

In addition, without regulatory authority, the Administrator is not considered a credible actor in the formulation of Government-wide policy. Lester Fettig, former Administrator for Federal Procurement Policy and an advocate for a strong OFPP, discussed this credibility problem at the April 27, 1983, hearing:

> Without that directive authority in statute behind the Administrator, even the most mundane chores are difficult. Effectively spearheading a particular reform simply could not be done without it. Why? Because there would be no clout, no threat, that OFPP could do anything but accede to the lowest common denominator of agency recalcitrance. The Administrator's kit of bureaucratic tools, in the end, would be devoid of any wrench big enough to give him or her the necessary leverage.

The Committee found this credibility problem to be evident in the difficulties that the OFPP has had in establishing the FAR and in enforcing its policy directives. One recent example involved the issuance of a policy directive on public notice for proposed procurement regulations. The Administrator issued OFPP Policy Letter 83-2 on May 25, 1983, pursuant to his authority to issue policy directives which all agencies are required to implement. This policy directive requires agencies to publish in the Federal Register notice of all significant proposed procurement policies and regulations and to allow interested parties 30 to 60 days in which to submit comments on the proposal. According to a May 30, 1982, Federal Contracts Report article on OFPP Policy Letter 83-2, one DOD official, when asked what sort of impact the directive would have on the Defense Acquisition Regulatory Council's future practices, is reported to have responded: "None. They [OFPP] don't have regulatory authority."

Senator Chiles, a former member of the Commission on Government Procurement and also an advocate for a strong OFPP, effectively summarized the Committee's position on restoring regulatory authority in his testimony at the April 27, 1983, hearing:

> Should we restore the regulatory authority originally provided in the 1974 Act? If the Office of Federal Procurement Policy is going to be a focal point for congressional oversight of congressional policies, if we want to standardize and simplify agency buying regulations and encourage more competition and more small business participation, and, if we want to resolve wasteful agency turf wars that arise, then I think the Administrator must have regulatory authority.

B. IMPLEMENTATION OF PROCUREMENT REFORMS UNDER EXECUTIVE ORDER 12352

The OFPP submitted its proposal for a Uniform Federal Procurement System [UFPS] to Congress in February 1982. The UFPS, which includes a system for federal procurement, a management structure to implement and enforce this procurement system and proposed legislative changes for implemetation, was developed around four basic themes:

> Uniform Government-wide procurement policy and improved procurement management, with provisions for decentralized operations and flexibility to meet unique agency requirements;
>
> A simplified procurement system that is responsive and provides timely results;
>
> Effective competition, with latitude for innovation; and
>
> Professionalism in the procurement work force, with emphasis on initiative, judgement, responsibility and accountability.

Executive Order 12352, which was issued by the President on March 17, 1982, provides the vehicle for implementing those reforms contained in the proposal that can be accomplished administratively. The Executive Order requires the heads of executive agencies to carry out specific reforms in federal procurement, including designating an agency procurement executive with responsibility to oversee development of the procurement system and establishing career management programs conducive to securing and maintaining a highly qualified procurement work force. In addition, the Executive Order directs the DOD, GSA and NASA to continue their joint efforts to complete the FAR and requires the Director of the Office of Personnel Management to consult with agency heads to ensure that personnel policies and classification standards meet the needs of the agencies for a professional work force.

To facilitate agency implementation of these reforms, the Executive Order requires the Director of OMB, through the OFPP, to provide broad policy guidance and overall leadership. To date, however, progress in implementing the reforms has been slow. According to the GAO's June 1983 report, agencies are all but ignoring the policy guidance developed by the interagency task groups, which the OFPP formed to assist agencies in implementing the Executive Order. The report states:

> Agency officials believe they do not have to implement policy guidance stemming from the Executive Order. This is to be expected since the wording in the Executive Order did not establish a strong implementing mechanism and OFPP's legislative authority is weak. Our review of progress under the order found a real need for a decisionmaker to facilitate reform.

The prime example cited by the GAO of agencies failing to follow OFPP guidance is the designation of a procurement executive. While 44 agencies had appointed their procurement executives as of April 1983, the GAO found that of the 12 agencies sampled (which comprise 97 per cent of the federal procurement budget), only a third had adopted charters which set forth the procurement

executive's responsibilities. The Defense Department, for one, stated that no special charter was necessary since sufficient authority is already in existing DOD directives. The GAO found, however, that these DOD directives do not contain the clear mandates of the Executive Order or all of the responsibilities set forth in the Model Charter provided for guidance. Of the four agency charters adopted, moreover, the GAO found that none were complete compared to the Model Charter. Absent a clear charter, the procurement executive is a title without substance.

Equally fundamental to the execution of good procurement policy is the need for a professionally competent work force. Rules and regulations cannot substitute for individuals exercising sound business judgment. No requirement is more important, yet none has been more neglected. In February 1982, the Federal Expenditures Subcommittee conducted an oversight hearing which found that a more coordinated effort to enhance the training and professionalism of those representing the Government's business interests was absolutely vital. More recently, a preliminary GAO review of the procurement work force, requested by Senators Roth and Cohen, has demonstrated that the quality of procurement personnel has deteriorated over the past two years as evidenced by lower educational standards among newly appointed contracting officers, difficulties in filling agency intern programs with qualified candidates, and complaints from procurement officials about the lack of skills of newly appointed personnel.

The GAO strongly endorses a leadership role for the OFPP Administrator in the development of agency procurement systems. In its June 1983 report, the GAO recommends that agency management responsibilities, as prescribed by Executive Order 12352, should be codified and that the Administrator should develop performance standards to ensure effective implementation. While these standards may effect the range of discretion available to agencies in developing their own procurement systems, the GAO emphasizes that the standards would be formulated with full agency participation.

ADDITIONAL AREAS OF PROCUREMENT REFORM

In addition to these major projects, the OFPP is also involved in many other procurement reform efforts. In particular, the OFPP has worked extensively with the Oversight Subcommittee over the years in following up and providing assistance on several contracting issues.

In 1979 and 1980, the Oversight Subcommitte held a series of hearings on "Hurry-up" Spending. The Subcommittee found that agencies rush to spend all their available funds at the end of the fiscal year for fear of not receiving full funding the next year. As follow-up, the Oversight Subcommittee worked with the OFPP to rectify this wasteful spending practice. The OFPP issued Policy Letter 81-1 in August 1981 which requires each agency to develop a management system for advance procurement planning, lead-time procedures, cut-off date procedures for procurement initiation, review procedures for last quarter spending and a contract action log. An end-of-year spending alert letter is sent by the OMB Direc-

tor to all agencies with a comprehensive checklist prepared by the OFPP to be used for detecting and preventing end-of-year procurement abuse.

As a result of this joint effort, "hurry-up" spending does not appear to be the problem it was in the past. In a March 1983 letter to Senator Cohen, Donald Sowle stated that there had been a favorable trend in fourth quarter spending during fiscal 1982, notwithstanding an increase of $25.4 billion in total procurement dollars over fiscal 1981 totals. The Federal Procurement Data Center [FPDC] reported fourth quarter procurement obligations of $38.6 billion, which is 24.3 per cent of the total procurement obligations of $158.9 billion for fiscal 1982. According to the FPDC, this is a decrease from 31.8 per cent of the total procurement obligations of $134.5 billion for fiscal 1981.

In 1981, the Oversight Subcommittee held a series of hearings to examine the adequacy of federal debarment and suspension procedures, which are used to protect the Government from doing business with fraudulent or otherwise irresponsible contractors. The Oversight Subcommittee found problems, such as the failure of some agencies to debar or suspend contractors engaged in fraudulent practices as well as failure of many agencies to honor the debarments or suspensions of the initiating agency. Based on these findings, the Oversight Subcommittee worked with the OFPP to develop new Government-wide procedures. The OFPP issued Policy Letter 82–1 in June 1982, which sets forth, for the first time, Government-wide policies and procedures for administrative debarment and suspension of federal contractors and provides for a consolidated listing of administrative debarments and suspensions.

Most recently, the OFPP worked with the Oversight Subcommittee in providing drafting assistance for S. 338, the Competition in Contracting Act of 1983, which is designed to increase the use of competitive contracting procedures and restrict noncompetitive—sole-source—contracting to only those circumstances when it is truly necessary. The OFPP was helpful in providing the needed expertise and technical assistance. S. 338 was reported unanimously by the Governmental Affairs Committee on March 23, 1983, and by the Armed Services Committee on June 27, 1983. The OFPP has drafted a policy letter on noncompetitive contracting as an interim reform measure.

While the Committee applauds the OFPP's efforts thus far, further procurement reforms need to be developed, and changes are needed in the OFPP Act to ensure that this work is completed and implemented. Specifically, the Committee found that the Administrator's authority should be strengthened to (1) ensure OFPP's leadership in the establishment, development and maintenance of the FAR system and (2) facilitate effective implementation of the procurement reforms under Executive Order 12352.

V. Provisions of S. 1001

A. REAUTHORIZE THE OFFICE OF FEDERAL PROCUREMENT POLICY FOR FIVE YEARS

S. 1001 as reported, extends the OFPP's authorization for an additional five fiscal years beyond its present expiration date of September 30, 1983. S. 1001 would also increase authorization of the OFPP's annual appropriations from $4 million to $5 million, in light of the five-year reauthorization and the Office's increased responsibilities. In his opening statement at the April 27, 1983, hearing, Senator Cohen emphasized the importance of reauthorizing the OFPP:

> Any action on the part of Congress short of reauthorization would surely threaten the continuation of [the OFPP's] projects and undermine the Administration's procurement reform efforts. The OFPP serves as the critical link between the Congress and the Executive branch in the continuing effort to improve the federal procurement process. The legislation which Senator Roth and I introduced would preserve that link.

The Committee also believes that statutorily reauthorizing the OFPP, with separate appropriations, is important in maintaining its effectiveness, independence and program stability. The statutory base provides the Office with organizational and functional stature, as well as visibility, within the Executive branch. Such stature is particularly beneficial in dealing with the heads of the procuring agencies and with the Congress. Separate statutory authority also assures greater responsiveness to Congress through Senate confirmation of the Administrator, annual appropriation hearings, and a sunset provision.

Dissenting views on reauthorization of the OFPP were expressed, however, most notably by the Defense Department. In a February 7, 1983, letter from Paul Thayer, Deputy Secretary of Defense, to Edwin Meese, Counselor to the President, Mr. Thayer commented on an OMB draft legislative proposal to reauthorize the OFPP:

> Certain aspects of this proposal just do not seem to be in line with how I believe government agencies should be organized or operated. First of all, I do not believe that the Executive branch should propose the continuation of a legislative authorization of this function when this can be accomplished by the executive authority of the President. Second, the proposed legislation requires the Office of Federal Procurement Policy to report policy matters directly to the Government Operations Committees of Congress.

The Defense Department expressed similar opposition to the creation of a central procurement policy office over ten years ago in a September 1972 letter from Kenneth Rush, Deputy Secretary of Defense, to Perkins McGuire, Chairman of the Commission on Government Procurement. In this letter, Mr. Rush took issue with the Commission's primary recommendation to establish an OFPP. He stated that:

23-733 O - 83 - 3

> Since there is a satisfactory coordinating function in the Office of the Secretary of Defense and in general throughout the Executive branch * * *, it would be detrimental to establish yet another policy group on top of that which presently exists.

Despite opposition from the Defense Department and certain other major procuring agencies to any reauthorization of the OFPP, the Administration's witness testified at the April 27, 1983, hearing in support of reauthorization. Joseph Wright, Deputy Director of the OMB, stated that:

> Maintaining the Office is essential to continued improvement of the procurement process and to furthering the initiatives begun by Reform '88 and Executive Order 12352.

Mr. Wright also testified in favor of a five-year, rather than three-year, reauthorization because:

> The Office has already gone through a sufficient testing period, and it now needs the time to accomplish its mission on a sustained basis.
>
> Periodic review of the OFPP not only provides an ongoing incentive for the Office, but it also helps to assure that the Office continues in the direction that Congress and the President intend.

The Committee believes that a five-year reauthorization is consistent with the long-term nature of the OFPP's responsibilities—which include implementation of the procurement reforms under Executive Order 12352 and the establishment, development and maintenance of the FAR system—and that it reflects congressional commitment to procurement reform.

B. STRENGTHEN THE ADMINISTRATOR'S AUTHORITY

S. 1001, as reported, strengthens the authority and functions of the Administrator for Federal Procurement Policy by restoring regulatory authority, as originally provided by Public Law 93-400 and subsequently rescinded by Public Law 96-83, and by specifying a leadership role for the Administrator in the establishment, development and maintenance of the FAR system.

Section 6(a) of S. 1001 states that the Administrator "shall provide overall direction of procurement policy" and "may prescribe Government-wide policies, regulations, procedures and forms which shall be followed by executive agencies" in the procurement of property, services and construction, alteration, repair or maintenance of real property. S. 1001 recognizes the authorities of the Secretary of Defense and the Administrator for the National Aeronautics and Space Administration to issue procurement regulations for their respective agencies and the authority of the Administrator of General Services to issue procurement regulations for the civil agencies. The restoration of regulatory authority in the Administrator for Federal Procurement Policy will help to ensure the integrity of the FAR. With this authority, the Administrator will be better able to reconcile differences among those agencies. Such

regulatory authority also is required if the OFPP is to effectively exercise Government-wide jurisdiction over procurement policy.

By restoring the Administrator's regulatory authority, the Committee does not intend for the OFPP to supersede the current efforts by the DOD, GSA and NASA to issue the FAR. Rather, S. 1001 preserves the present regulatory framework—with the DOD, GSA and NASA directed by the President under Executive Order 12352 to continue their joint efforts to consolidate their common procurement regulations into a single, simplified FAR—while providing the OFPP with regulatory authority to be used in those situations where these agencies are unable to agree or fail to act. Section 4 of S. 1001 provides a statutory base for the FAR system, which was set forth in OFPP Policy Letter 80–5. This section defines the "single system of Government-wide procurement regulations," a generic term for the FAR system, as consisting of:

> (A) a single Government-wide procurement regulation to be issued jointly by the General Services Administration, the Department of Defense, and the National Aeronautics and Space Administration, pursuant to their respective authorities, title III of the 1949 Federal Property and Administrative Services Act (41 U.S.C. 251 et seq.), Chapter 137 of title 10, United States Code, and the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451 et seq.), and (B) agency acquisition regulations implementing or supplementing the Government-wide procurement regulation issued as provided in clause (A), which shall be limited to (i) regulations essential to implement Government-wide policies and procedures within the agency and (ii) additional policies and procedures required to satisfy the specific and unique needs of the agency.

One of the Administrator's primary functions, as set forth in section 6(c)(1) of S. 1001, is to provide leadership and resolve differences among the executive agencies in the establishment, development and maintenance of this system. In effect, the Administrator is reponsible not only for assuring uniformity in procurement policies, but also for resolving differences among the regulation-writing agencies and issuing Government-wide procurement regulations if these agencies fail to act. While the Committee does not intend for the Administrator to serve as "procurement czar," the Committee believes that it is important to strengthen the Administrator's hand in the regulatory process to provide the needed leadership. This function is especially important in light of the GAO's conclusion in its June 1983 report that without strong OFPP leadership for resolving conflicts, the FAR system may crumble under the proliferation of supplemental agency procurement regulations.

The initial objectives in establishing a FAR system were eliminating conflicts, redundancies and inconsistencies within the existing regulations, providing one face to industry, and making it easier to do business with the Government, particularly for small and minority firms. These objectives will not be realized, however, if the FAR simply becomes another layer of regulation superimposed on the existing regulations. Therefore, the Committee reiterates the policy set forth in OFPP Policy Letter 80–5 that agency-

specific regulations which are outside the scope of the single Government-wide procurement regulation "shall not restate, paraphrase, or in any way be inconsistent with the FAR coverage."

While the Government-wide regulation is the core of the FAR system, the "system" concept of the FAR necessitates the integration of any essential implementing or supplementing regulations issued by the procuring agencies into a coherent whole. If an agency issues a regulation which is not required to satisfy its specific and unique needs or is otherwise contrary to Government-wide policy, section 6(e) of S. 1001 authorizes the Administrator, with OMB concurrence, to rescind the regulation. The Committee believes that this authority, in addition to the Administrator's regulatory authority, is critical for maintaining the FAR system.

Mr. Wright testified at the April 27, 1983, hearing that the OFPP can function effectively without regulatory authority and that the mere existence of regulatory authority could create unnecessary tension between OFPP and the regulatory agencies. The Committee believes, however, that there are sufficient checks and balances on the Administrator's authority to preclude any abuse and forestall tension between the OFPP and the procuring agencies. Section 6(b) of S. 1001 specifically prohibits the Administrator from (1) impairing or interfering with the determination by executive agencies of their need for, or their use of, specific property, services or construction, or (2) interfering with the determination by executive agencies of specific actions in the award or administration of procurement contracts.

Strengthening the Administrator's authority will mean increased responsibilities and workload for the Office. Since the OFPP will remain a small agency, the need for a staff of outstanding and highly experienced procurement professionals to provide leadership in procurement policy is essential. Responsible policymaking requires varied experience. Therefore, the Committee urges the allocation of a sufficient number of Senior Executive Service and other senior level positions to attract and retain the high quality of experienced individuals needed.

The Administrator's regulatory authority does not affect the statutory authority of other agencies over the socio-economic laws implemented through the procurement process. These statutory authorities include the authority of the Administrator of the Small Business Administration under the Small Business Act and the authority of the Secretary of Labor over labor standards, such as the Davis-Bacon Act, the Service Contract Act, the Fair Labor Standards Act, the Copeland Anti-Kickback Act, the Contract Work Hours and Safety Standards Act, and the Walsh-Healey Public Contracts Act. The Secretary's authority with regard to certain of these labor standard laws was confirmed by the Attorney General in March 1979. Nothing in this legislation should be construed as contradicting that opinion or interpretation.

C. CODIFY AGENCY MANAGEMENT RESPONSIBILITIES

S. 1001, as reported, codifies the basic agency management responsibilities prescribed by Executive Order 12352. Section 7 of S. 1001 requires that the head of each executive agency shall (1) in-

crease the use of effective competition in procurement, (2) establish clear lines of authority, accountability and responsibility for procurement decisionmaking within the agency, (3) designate a procurement executive who shall be responsible for management direction of the agency's procurement system, and (4) develop and maintain a procurement career management program in the agency to assure an adequate professional workforce. These agency responsibilities were recognized by the Commission and included as key features of the Administration's proposed UFPS.

The Committee does not intend to legislate agency management, but rather to ensure that the objectives of the OFPP's procurement reform efforts are not thwarted by agency failure to act. As noted earlier, the GAO has found that, to date, progress in implementing the reforms under Executive Order 12352 by the individual agencies has been slow. The Committee is also aware that some policy directives promulgated by the Administrator have not been implemented by certain agencies. The Committee strongly believes that agency cooperation with the OFPP and compliance with OFPP directives is today more important than ever and is critical to the successful implementation of procurement reform.

The first management responsibility is to increase the use of effective competition. Although "effective competition" is not amenable to rigid definition, the Committee's report on S. 338, the Competition in Contracting Act of 1983 (98–50), sets forth five major components: (1) the information required to respond to a public need is made available to prospective contractors in a timely fashion; (2) the government and contractor act independently; (3) two or more contractors act independently to respond to a public need by offering property or services which meet that need; (4) the government has expressed its need in a manner which promotes competition; and (5) there is no bias or favoritism, other than required by law, in the contract award.

The second management responsibility is to establish clear lines of authority, accountablity and responsibility for procurement decisionmaking within the agency. Each agency head is responsible for the establishment and organizational placement of procurement functions. To carry out this responsibility effectively, the agency head must place the procurement function at a sufficiently high level in the organization to ensure (1) direct access to the head of the major organizational element served, (2) cooperative equality with organizational counterparts, and (3) sufficient status to deal with contractor executives.

Control is integral to the effective management of any system. Control of an agency procurement system will be maintained by system standards, built-in checks and balances and feedback. Collectively, these features will tell agency managers if the system is operating as intended or if it needs to be modified. Agency managers at the operational level will be held accountable for the results achieved by their procurement organizations. Contracting officers, in turn, well be held accountable for meeting system standards and achieving desired results. These essential elements of authority and accountability, coupled with responsiblity at all levels, provide agency management with the tools necessary for controlling the system.

The third management responsibility is to designate a senior procurement executive who will serve as the focal point for managing the agency procurement system. While most agencies have appointed a procurement executive, few have taken the second—and equally important—step of defining the responsibilities of this new position. According to the Model Chapter for Procurement Executives developed by an OFPP interagency task force, the procurement executive's functions are to include: (1) participating in the development of Government-wide procurement policies, regulations and standards, (2) developing unique agency policies, regulations and standards, (3) ensuring that procurement specialists are involved in all stages of the procurement process, beginning with budgetary and advance planning, (4) evaluating system performance in accordance with approved standards, (5) certifying to the agency head that procurement systems meet approved standards, (6) enhancing career management of the procurement work force, and (7) acting as the agency advocate for competition.

The Committee believes that it is essential for agency heads to designate a procurement executive, with the authority to carry out the functions listed above, since this management responsibility underlies the procurement reform effort.

The last agency management responsibility is to develop and maintain a procurement career management program. Training, education and classification are only three facets of a total career management system. Others include work force planning and analysis, recruitment and selection, intern and trainee programs, performance appraisal, incentive awards, certification and contracting officer qualifications. All of these functions, combined and integrated as part of a systematic procurement career management program, are essential to building and maintaining a fully professional work force.

The GAO recommends in its June 1983 report that these agency management responsibilities should be codified. This would add weight to the Executive Order, according to the GAO, and improve agency response. Although Joseph Wright stated to Senator Cohen in a May 20, 1983, letter that detailed management aspects of a reform program should not be legislated, he provided language which was acceptable to the Administration "if the Committee believes that some statement of broad principles for continuing procurement reform is needed in the legislation." The language provided was largely incorporated into section 7 of S. 1001.

The Committee believes that the management principles set forth are basic to sound procurement policy and should therefore be made permanent in the OFPP Act.

D. ESTABLISH LEADERSHIP ROLE IN THE DEVELOPMENT OF AGENCY PROCUREMENT SYSTEMS

To ensure effective implementation of the reforms under Executive Order 12352, S. 1001, as reported, expands the scope of the Administrator's authority for "providing overall direction of procurement policy" to "providing leadership in the development of procurement systems of the executive agencies." Section 6(c)(2) of S. 1001 specifies a new function for the Administrator to "coordinate

the development of Government-wide procurement system standards that shall be implemented by the executive agencies" in order to measure the operational effectiveness of their procurement systems.

This concept of establishing performance standards which individual agency procurement systems would have to maintain in order to be considered acceptable was originally developed in the UFPS. Section 4 of S. 1001 incorporates the definition from the UFPS for "procurement system"—the integration of the procurement process, the professional development of procurement personnel, and the management structure for carrying out the procurement function—and the definition for "standards"—the criteria for determining the effectiveness of the procurement system by measuring the performance of the various elements of such system.

In carrying out this new function, the Administrator is required to work with the agency procurement executives to determine the specific areas where Government-wide standards should be established. The UFPS provides examples of specific areas in which standards may be applicable: (1) procurement process—description of needs, advance procurement planning, lead-time, public notices for competition, and responsiveness to user, (2) work force—entry qualifications, appointment of contracting officers, and accountability, and (3) management system—policy implementation and conflict resolution. Once these areas are identified within each element of the procurement system, the Administrator and agency procurement executives will define the best way to measure performance, e.g., time, cost, quality, accuracy, quantity, etc., and establish specific levels of desired performance in the agency for each measure. When standards are fully implemented, the procurement executives will use them to certify the adequacy of their procurement systems to the agency heads.

E. PROVIDE TESTING AUTHORITY

S. 1001, as reported, authorizes the Administrator to develop innovative procurement methods and procedures which can be tested by selected agencies under controlled conditions with advance notice to the Congress. The Committee believes that such testing authority is necessary to provide the Executive branch and the Congress with the data needed to make informed decisions on changes in the procurement statutes. The Administrator's testing authority provided in S. 1001 does not, however, preclude the heads of the procuring agencies from testing new methods and procedures pursuant to their respective authorities.

The Administrator is required, in developing a test program, to consult with the agency heads to (1) ascertain the need for and specify the functions of such programs, (2) develop guidelines for carrying out such program and criteria to be used in measuring its success, (3) evaluate the costs and benefits, (4) select the appropriate agencies to be tested, (5) specify the products and services to be procured under the test program, and (6) develop methods for analyzing the results.

All the witnesses at the April 27, 1983, hearing and the vast majority of agencies, associations and other procurement experts

which responded to the Oversight Subcommittee's questionnaire, recommended that the Administrator should have testing authority. The National Academy of Public Administration [NAPA], for one, strongly endorsed this concept in its March 1983 interim report on "Deregulation of Government Management: Federal Procurement." According to NAPA's study, testing authority provides "one of the most productive opportunities for future reforms in procurement" and may be the "most important recommendation in the procurement area since the types of matters which should be considered have long-range potential, affecting every aspect of the procurement process." The NAPA study gave examples of areas appropriate for testing:

New personnel practices, such as the "Rank in Person" technique being tested by the Navy;

New procedures to reduce paperwork involved in bidders lists and solicitation preparation, such as electronic ordering and standard contract clauses;

Revised practices in fostering socio-economic programs through procurement; and

Greater discretion for agency heads in the application of contracting-out procedures.

The testing authority provided in S. 1001 does not, however, permit statutory waiver, which the NAPA study and others recommended. The Committee was concerned that authorizing the Administrator to waive existing law for testing purposes may invite abuse. Testing, in effect, could be used to circumvent congressional intent. If the Administrator determines that it is necessary to waive existing law in order to implement a proposed test program, S. 1001 requires the Administrator to notify the House Government Operations Committee and the Senate Governmental Affairs Committee and request that both committees take the necessary action to provide a waiver of such laws. The notice shall include a description of the proposed test program, the procedures to be used in carrying out such program, the laws affected and those which must be waived in order to implement such program, and the agencies involved.

F. TRANSFER THE FEDERAL ACQUISITION INSTITUTE

S. 1001, as amended, provides for the transfer of the Federal Acquisition Institute [FAI] from the OFPP to the General Services Administration.

Under the direction of the Administrator for Federal Procurement Policy, the FAI is presently charged with promoting and conducting research in procurement policies, regulations, procedures and forms, as well as recommending and promoting programs of the Office of Personnel Management [OPM] and executive agencies for recruitment, training, career development and performance evaluation of procurement personnel. In recent years, the FAI has taken the lead in fostering and promoting Government-wide career management programs to enhance the professional procurement work force. Through its leadership and guidance, the FAI has initiated research and studies to improve the procurement process, and

working with the agencies and the OPM, has developed new standards for the procurement work force.

Section 6(c)(5) of S. 1001 provides that the General Services Administration will serve as the executive agent for the Administrator for Federal Procurement Policy in managing the FAI. This transfer does not diminish the importance of the FAI's mission, but rather enhances its role and facilitates more direct exposure to agency concerns. The FAI will be located in the Office of the Administrator of General Services in order to provide the top-level support and independence needed to pursue its multi-agency mission and objectives. Gerald Carmen, GSA Administrator, discussed the benefits of transfering FAI to GSA in an April 28, 1983, letter to Senator Cohen:

> The transfer would complement and strengthen the Executive branch's ability to concentrate and deliver programs to improve the procurement process in all agencies. Locating the FAI's functions and responsibilities within an organization that has the responsibility for the development and issuance of the new Federal Acquisition Regulation would increase the ability to identify problems and develop comprehensive methods to correct weaknesses. Mechanisms for interagency coordination and cooperation have been established. GSA can and will provide the necessary resources and leadership to accomplish the Institute's mission to improve Government procurement through research, education, training and career development.

While S. 1001 provides for the transfer of FAI, the Committee believes that policy leadership and oversight responsibilities should remain with the Administrator for Federal Procurement Policy. In areas of work force development and procurement research, policy leadership is inextricably interwoven with the overall procurement policy responsibility of the Administrator and should, therefore, remain in the Office.

G. REQUIRE STUDIES ON TWO PROCUREMENT ISSUES

As proposed by Senator Carl Levin, section 7 of S. 1001 directs the Administrator of the OFPP to conduct studies and issue reports on (1) the feasibility and advisability of promulgating Government-wide regulations applicable to the suspension and debarment of recipients of federal financial assistance; and (2) the extent of competition in the award of subcontracts by federal prime contractors. These reports are required to be submitted to the House Government Operations Committee and the Senate Governmental Affairs Committee by April 15, 1984.

In June 1982 the OFPP issued a policy letter setting forth policies and procedures governing the debarment and suspension of federal contractors. The Committee now directs the office to examine whether or not Government-wide regulations applicable to the debarment and suspension of recipients of federal grants would be desirable and practical.

The Committee's mandate of a study of competition at the subcontractor level reflects its long-standing concern about competition in federal contracting. The Committee hopes that the OFPP study will provide the basis for reforms that would promote greater competition in the award of subcontracts by federal contractors. Such competition clearly seems to hold the same potential for substantial savings that has already been demonstrated in the competitive award of prime contracts.

VI. Conclusion

The need for a central procurement policy office in the Executive branch, as recommended by the Commission on Government Procurement over a decade ago, has been clearly confirmed during the Committee's consideration of S. 1001. In its nine-year history, the Office of Federal Procurement Policy has performed its statutory functions responsibly, fostering significant efforts to improve federal procurement practices. To continue as an effective catalyst for procurement reform, the OFPP's role in the formulation of Government-wide procurement policy needs to be strengthened, especially to ensure the establishment, development and maintenance of the Federal Acquisition Regulation system and the implementation of procurement reforms under Executive Order 12352. The Committee strongly believes that S. 1001 serves this purpose.

VII. Section-by-Section Analysis

SECTION 1. SHORT TITLE

The short title of this bill is the Office of Federal Procurement Policy Act Amendments of 1983.

SECTION 2. REFERENCE

Section 2 states that references in this bill to a section or other provision shall be considered to amend a section or other provision of the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.).

SECTION 3. DECLARATION OF POLICY

Section 3 amends section 2 of the OFPP Act to revise the congressional declaration of policy. Section 2, as amended, retains the language from present law which states congressional policy to promote economy, efficiency, and effectiveness in the procurement of property and services, while emphasizing the use of effective competition, the development of simplified procurement processes and small business participation.

SECTION 4. DEFINITIONS

Section 4 amends section 4 of the OFPP Act by adding definitions for the terms "procurement system" to mean the integration of the procurement process, the professional development of procurement personnel and the management structure for carrying out the procurement function, and "standards" to mean the criteria for determining the effectiveness of the procurement system.

Section 4, as amended, also defines the term "single system of Government-wide procurement regulations" to mean (A) a single Government-wide procurement regulation to be issued jointly by the General Services Administration, the Department of Defense, and the National Aeronautics and Space Administration, and (B) agency acquisition regulations which implement or supplement the Government-wide procurement regulation. This definition incorporates concepts developed in OFPP policy letter 80–5 on the Federal Acquisition Regulation System and Executive Order 12352 on Federal Procurement Reforms.

SECTION 5. AUTHORITY AND FUNCTIONS OF THE ADMINISTRATOR

Section 5 amends section 6 of the OFPP Act to revise and strengthen the authority and functions of the Administrator for Federal Procurement Policy.

Subsection 6(a), as amended, authorizes the Administrator to prescribe Government-wide policies, regulations, procedures, and forms, which shall be implemented by the agencies, in order to provide overall direction of procurement policy and leadership in the development of agency procurement systems.

Subsection 6(b), as amended, places constraints on the Administrator's authority. These constraints prohibit the Administrator from (1) impairing or interfering with an agency's determination of need for, or use of, specific property and services, and (2) interfering with an agency's determination of specific actions in the award or administration of procurement contracts.

Subsection 6(c), as amended, sets forth the functions of the Administrator. The first function specifies the Administrator's role in the regulatory process as providing leadership and resolving differences among the executive agencies in the establishment, development and maintenance of the single system of Government-wide procurement regulations. The second function provides that the Administrator shall coordinate the development of Government-wide procurement system standards, which should facilitate implementation of the reforms prescribed by Executive Order 12352.

Subsection (c) further sets forth functions for the Administrator which had previously been provided in subsection (d), including providing leadership in the formulation of executive branch positions on procurement legislation, providing for the establishment of a Federal Procurement Data Center, establishing procedures to solicit public comment on procurement policies and regulations, developing standard contract forms, and completing action on the recommendations made by the Commission on Government Procurement.

In addition, this section provides for the transfer of the Federal Acquisition Institute to the General Services Administration, along with its functions to foster and promote Government-wide career management programs and to promote and coordinate Government-wide research and studies.

Subsection 6(d), as amended, requires the Administrator to consult with the affected executive agencies, including the Small Business Administration, in carrying out the functions provided in subsection (c). This subsection provides that the Administrator may,

with the concurrence of the agency heads affected, designate an agency to assist in the performance of such functions, and may establish advisory committees or interagency groups for assistance in providing leadership in the establishment, development, and maintenance of the single system of Government-wide procurement regulations.

Subcommittee 6(e), as amended, authorizes the Administrator, with OMB concurrence, to rescind an agency's procurement regulation if the Administrator determines that such regulation is inconsistent with the policies set forth in section 2 or any policies, regulations or procedures issued pursuant to subsection 6(a).

Subsection 6(f), as amended, prohibits the assignment, delegation, or transfer of duties, functions, or responsibilities to the Administrator other than those expressly assigned by the OFPP Act.

Subsection 6(g), as amended, limits the application of the Administrator's authority to procurements payable from appropriated funds.

Subsection 6(h), as amended, states that the OFPP Act shall not be construed to (1) impair or affect the procurement of automatic data processing and telecommunications equipment and services or of real property or (2) limit the current authorities and responsibilities of the Director of the OMB.

Subsection 6(i), as amended, authorizes the Administrator to prescribe policies, regulations, procedures, and forms which shall be followed by executive agencies in providing for the procurement of property and services by recipients of Federal grants or assistance.

SECTION 6. AUTHORIZATION OF APPROPRIATIONS

Section 6 amends section 11 of the OFPP Act to reauthorize the Office for an additional five years and to increase its authorization of appropriations from $4 to $5 million.

SECTION 7. TESTS OF INNOVATIVE PROCUREMENT METHODS AND PROCEDURES

Section 7 amends the OFPP Act by adding a new section 15 which authorizes the Administrator to develop innovative procurement methods and procedures to be tested by selected agencies. Such methods and procedures are required to be consistent with the policies set forth in section 2.

This section requires the Administrator, in developing a test program, to consult with the agency heads to (1) ascertain the need for and specify the functions of such programs, (2) develop guidelines for carrying out such program and criteria to be used in measuring its success, (3) evaluate the costs and benefits, (4) select the appropriate agencies to carry out such program, (5) specify the products or services to be procured, and (6) develop the methods for analyzing the results.

This section prohibits any testing unless the program has been approved by the head of the executive agencies selected to carry out such program.

If the Administrator determines that it is necessary to waive existing laws in order to implement a proposed test program, this section requires the Administrator to notify the House Committee on

Government Operations and the Senate Committee on Governmental Affairs and request that both committees take the necessary action to waive such laws. The notice shall include a description of the proposed test program, the procedures to be followed in carrying out such program, the laws affected and those which must be waived in order to implement such program, and the agencies involved.

Section 7 also amends the OFPP Act by adding a section 16 on Executive Agency Responsibilities. This section incorporates management directives prescribed by Executive order 12352, which require the head of each executive agency to (1) increase the use of effective competition, (2) establish clear lines of authority, accountability and responsibility for procurement decisionmaking, (3) designate a procurement executive who will be responsible for managing the agency's procurement system, and (4) develop and maintain a procurement career management program. In addition, agencies are required to participate, to the extent practicable, in interagency groups established by the Administrator.

Section 7 further amends the OFPP Act by adding section 17 on Studies and Reports. This section requires the Administrator to conduct studies and issue reports on (1) the feasibility and advisability of promulgating Government-wide regulations applicable to the suspensions and debarments of recipients of federal financial assistance, and (2) the extent of competition in the awarding of subcontracts by federal prime contractors. This section requires that both reports are to be submitted to the Senate Committee on Governmental Affairs and House Committee on Government Operations by April 15, 1984.

SECTION 8. MISCELLANEOUS AMENDMENTS

Section 8 amends the OFPP Act to delete references to the requirement for a Uniform Federal Procurement System proposal which the OFPP submitted to Congress in February 1982.

These miscellaneous amendments also make conforming changes to recognize the restoration of the OFPP's regulatory authority. Section 8, as amended, requires that the Administrator notify the Congress 30 days prior to the effective date of any major policy or regulation prescribed pursuant to section 6(a). Section 10, as amended, states that procurement policies, regulations, procedures, or forms in effect on the date of enactment of this bill shall continue in effect, unless subsequently modified. Section 12, as amended, authorizes the Administrator to delegate any authority, function or power under the Act, other than the authority to provide overall direction of procurement policy, to any other executive agency.

VIII. Estimated Cost of Legislation

U.S. Congress,
Congressional Budget Office,
Washington, D.C. August 1, 1983.

Hon. William V. Roth, Jr.,
Chairman, Committee on Governmental Affairs,
U.S. Senate, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for S. 1001, the Office of Federal Procurement Policy Act Amendments of 1983.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

Nancy M. Gordon
(For Alice M. Rivlin, Director).

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: S. 1001.
2. Bill title: Office of Federal Procurement Policy Act Amendments of 1983.
3. Bill status: As ordered reported by the Senate Committee on Governmental Affairs, August 1, 1983.
4. Bill purpose: This bill changes certain procurement procedures and record-keeping requirements for federal agencies and authorizes the appropriation of $5 million, each year, in fiscal years 1984 through 1988 for activities authorized by this bill. Currently, $2.4 million has been appropriated to the Office of Federal Procurement Policy [OFPP] for fiscal year 1983. The President has requested $2.7 million for fiscal year 1984.
5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1984	1985	1986	1987	1988
Authorization level	5.0	5.0	5.0	5.0	5.0
Estimated outlays	3.7	5.0	5.0	5.0	5.0

The costs of this bill fall within budget function 800.

Basis of estimate

This estimate assumes that the amount authorized will be appropriated. The estimate of outlays is based on historical spending patterns. This bill also authorizes the Administrator of OPFF to develop and implement, upon approval of the heads of the executive agencies involved, a program to test innovative procurement methods and procedures. This estimate does not include costs of activities that may be required of executive agencies because the extent of these activities has not been determined.

6. Estimated cost to State and local governments: None.
7. Estimate comparison: None.

8. Previous CBO estimate: On May 10, 1983, the Congressional Budget Office prepared a cost estimate on H.R. 2293, a similar bill, as ordered reported by the House Committee on Government Operations. This costs estimate differs from the earlier one, because the Senate version reauthorizes the activities of the OFPP for five years and authorizes the appropriation of $5 million per year. The House bill reauthorizes the program for only three years at $4 million per year. Also, the House version of the bill requires the Administrator of OFPP to report to Congress on a plan for testing innovative procurement methods and procedures, but the Senate bill authorizes the implementation of such testing.

9. Estimate prepared by: Judith Walker.

10. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

IX. Evaluation of Regulatory Impact

Pursuant to the requirements of paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory and paperwork impact of S. 1001, as well as the impact of the bill on personal privacy.

S. 1001, as reported, facilitates the establishment, development and maintenance of the Federal Acquisition Regulation system by strengthening the role of the Administrator for Federal Procurement Policy in the regulatory process. The FAR, effective April 1, 1984, will (1) consolidate existing agency procurement regulations into a single, simplified, and understandable regulation, (2) reduce the proliferation of regulations among and within agencies, and (3) make it easier to do business with the Government, particularly for small and minority firms, by reducing the regulatory and paperwork burden.

According to the Administration, the consolidation of the three primary regulations (Defense Acquisition Regulation, Federal Procurement Regulations, and the National Aeronautics and Space Administration Procurement Regulation) into the FAR will result in a 62 per cent reduction in the volume of primary regulations and is expected to eliminate 50 per cent of secondary and lower level regulations.

Through this consolidation, the Committee believes there is substantial potential for reducing the burden hours in government contracting. The authorities and responsibilities assigned to the Administrator for Federal Procurement Policy and the heads of the procuring agencies are complementary and consistent with those provided to the Director of the OMB under the Paperwork Reduction Act of 1980 (Public Law 96–511). S. 1001 does not, in any way, diminish the responsibilities of the procuring agencies to meet the requirements of the Paperwork Reduction Act and to assure every affected citizen the "public protection" afforded by Section 3512 of such Act.

X. Committee Vote

In compliance with paragraph 7(c) of Rule XXVI of the Standing Rules of the Senate, the vote of the Committee on this legislation was as follows:

Final passage: Ordered reported, 13 yeas; 0 nays.

YEAS (13)	NAYS (0)
Percy	
Stevens	
Cohen	
Durenberger	
Danforth	
Cochran	
Eagleton	
Chiles	
Glenn	
Sasser	
Levin	
Bingaman	
Roth	

XI. Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

The Office of Federal Procurement Policy Act, As Amended

[DECLARATION OF POLICY

[SEC. 2. It is declared to be the policy of Congress to promote economy, efficiency, and effectiveness in the procurement of property and services by and for the executive branch of the Federal Government by—

[(1) promoting the use of full and open competition in the procurement of products and services;

[(2) establishing policies, procedures, and practices which will require the Government to acquire property and services of the requisite quality and within the time needed at the lowest reasonable cost;

[(3) improving the quality, efficiency, economy, and performance of Government procurement organizations and personnel, and eliminating fraud and waste in the procurement process;

[(4) avoiding or eliminating unnecessary overlapping or duplication of procurement and related activities;

[(5) avoiding or eliminating unnecessary or redundant requirements placed on contractor and Federal procurement officials;

[(6) identifying gaps, omissions, or inconsistencies in procurement laws, regulations, and directives and in other laws, regulations and directives, relating to or affecting procurement;

[(7) achieving greater uniformity and simplicity, whenever appropriate, in procurement procedures;

[(8) otherwise promoting economy, efficiency, and effectiveness in Government procurement organizations and operation;

[(9) coordinating procurement policies and programs of the several departments and agencies;

[(10) minimizing possible disruptive effects of Government procurement on particular industries, areas, or occupations;

[(11) improving understanding of Government procurement laws and policies within the Government and by organizations and individuals doing business with the Government; and

[(12) promoting fair dealing and equitable relationships among the parties in Government contracting.]

DECLARATION OF POLICY

SEC. 2. It is the policy of the Congress to promote economy, efficiency and effectiveness in the procurement of property and services by the executive branch of the Federal Government by—

(1) promoting effective competition;

(2) establishing policies, procedures, and practices which will provide the Government with property and services of the requisite quality, within the time needed, at the lowest reasonable cost;

(3) promoting the development of simplified uniform procurement processes;

(4) promoting the participation of small business concerns;

(5) supporting the continuing development of a competent, professional work force;

(6) eliminating fraud and waste in the procurement process;

(7) eliminating redundant administrative requirements placed on contractor and Federal procurement officials;

(8) promoting fair dealings and equitable relationships with the private sector;

(9) ensuring that payment is made in a timely manner and only for value received;

(10) requiring, to the extent practicable, the use of commercial products to meet the Government's needs;

(11) requiring that personal services are obtained in accordance with applicable personnel procedures and not by contract; and

(12) ensuring the development of procurement policies that will accommodate emergencies and wartime as well as peacetime requirements.

FINDINGS AND PURPOSE

SEC. 3. (a) The Congress finds that economy, efficiency, and effectiveness in the procurement of property and services by the executive agencies will be improved by establishing an office to exercise responsibility for procurement policies, regulations, procedures, and forms.

(b) The purpose of this Act is to establish an Office of Federal Procurement Policy in the Office of Management and Budget to provide overall direction of procurement policies, regulations, procedures, and forms for executive agencies in accordance with applicable laws.

[DEFINITION

[SEC. 4. (a) As used in this Act, the term "executive agency" means an executive department, a military department, and an independent establishment within the meaning of sections 101, 102, and 104(1), respectively, of title 5, United States Code, and also a wholly owned Government corporation within the meaning of section 101 of the Government Corporation Control Act (31 U.S.C. 846).

[(b) As used in this Act, the term "procurement" includes all stages of the acquisition process, beginning with the process for determining a need for property and services through to the Federal Government's disposition of such property and services.]

DEFINITIONS

SEC. 4. As used in this Act—

(1) the term "executive agency" means—

(A) an executive department specified in section 101 of title 5, United States Code;

(B) a military department specified in section 102 of such title;

(C) an independent establishment as defined in section 104(1) of such title; and

(D) a wholly owned Government corporation fully subject to the provisions of chapter 91 of title 31, United States Code;

(2) the term "procurement" includes all stages of the process of acquiring property or services, beginning with how the need for such property or services is described by an executive agency and ending with contract completion and closeout;

(3) the term "procurement system" means the integration of the procurement process, the professional development of procurement personnel, and the management structure for carrying out the procurement function;

(4) the term "single system of Government-wide procurement regulations" means (A) a single Government-wide procurement regulation to be issued jointly by the General Services Administration, the Department of Defense, and the National Aeronautics and Space Administration, pursuant to their respective authorities, title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), chapter 137 of title 10, United States Code, and the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451 et seq.), and (B) agency acquisition regulations implementing and supplementing the Government-wide procurement regulation issued as provided in clause (A), which shall be limited to (i) regulations essential to implement Government-wide policies and procedures within the agency and (ii) additional policies and procedures required to satisfy the specific and unique needs of the agency; and

(5) the term "standards" means the criteria for determining the effectiveness of the procurement system by measuring the performance of the various elements of such system.

OFFICE OF FEDERAL PROCUREMENT POLICY

SEC. 5. (a) There is established in the Office of Management and Budget an office to be known as the Office of Federal Procurement Policy (hereinafter referred to as the "Office").

(b) There shall be at the head of the Office an Administrator for Federal Procurement Policy (hereinafter referred to as the "Administrator"), who shall be appointed by the President, by and with the advice and consent of the Senate.

[AUTHORITY AND FUNCTIONS

[SEC. 6. (a) The Administrator shall provide overall leadership in the development and implementation of procurement policies and the coordination of programs to improve the quality of performance of procurement personnel. The Administrator shall develop for submission under section 8(a) a uniform procurement system which shall, to the extent he considers appropriate and with due regard to the program activities of the executive agencies, include uniform policies, regulations, procedures, and forms to be followed by executive agencies—

[(1) in the procurement of—

[(A) property other than real property in being;

[(B) services, including research and development; and

[(C) construction, alteration, repair, or maintenance of real property; and

[(2) in providing for procurement by recipients of Federal grants or assistance of items specified in clauses (1)(A), (1)(B), and (1)(C) of this subsection, to the extent required for performance of Federal grant or assistance programs

[(b) Nothing in subsection (a)(2) shall be construed—

[(1) to permit the Administrator to authorize procurement or supply support, either directly or indirectly, to recipients of Federal grants or assistance; or

[(2) to authorize any action by recipients contrary to State and local laws, in the case of programs to provide Federal grants or assistance to States and political subdivisions.

[(c) The Administrator shall develop and propose a central management system consisting of the Office of Management and Budget, the General Services Administration, and procurement offices in executive agencies to implement and enforce the uniform procurement system described in subsection (a) of this section.

[(d) The functions of the Administrator shall include—

[(1) reviewing the recommendations of the Commission on Government Procurement to determine those recommendations that should be completed, amended, or rejected, and to propose the priority and schedules for completing the remaining recommendations;

[(2) developing a system of simplified and uniform procurement policies, regulations, procedures, and forms;

[(3) establishing criteria and procedures for an effective and timely method of soliciting the viewpoints of interested parties in the development of procurement policies, regulations, procedures, and forms;

[(4) promoting and conducting research in procurement policies, regulations, procedures, and forms, through the Federal Acquisition Institute, which shall be located within the Office and directed by the Administrator;

[(5) establish, through the Federal Procurement Data Center, which shall be located in the General Services Administration and acting as executive agent for the Administrator, a computer-based information system for collecting, developing, and disseminating procurement data which takes into account the needs of the Congress, the executive branch, and the private sector;

[(6) recommending and promoting, through the Federal Acquisition Institute, programs of the Office of Personnel Management and executive agencies for recruitment, training, career development, and performance evaluation of procurement personnel;

[(7) developing for inclusion in the uniform procurement system to be submitted under section 8(a), standard contracts and contract language in order to reduce the Government's cost of procuring goods and service as well as the private sector's cost of doing business with the Government; and

[(8) providing leadership and coordination in the formulation of executive branch positions on legislation relating to procurement.

[(e) In the development and implementation of the uniform procurement system the Administrator shall consult with the executive agencies affected, including the Small Business Administration and other executive agencies promulgating policies, regulations, procedures and forms affecting procurement. To the extent feasible, the Administrator may designate an executive agency or agencies, establish interagency committees, or otherwise use agency representatives or personnel to solicit the views and the agreement, so far as possible, of executive agencies affected on significant changes in policies, regulations, procedures and forms.

[(f) The authority of the Administrator under this Act shall not be construed to—

[(1) impair or interfere with the determination by executive agencies of their need for, or their use of, specific property, services, or construction, including particular specifications therefor; or

[(2) interfere with the determination by executive agencies of specific actions in the award or administration of procurement contracts.

[(g) Except as otherwise provided by law, no duties, functions, or responsibilities, other than those expressly assigned by this Act, shall be assigned, delegated, or transferred to the Administrator.

[(h)(1) Until the effective date of legislation implementing a uniform procurement system, the Administrator may, with the concurrence of the Director of the Office of Management and Budget, issue policy directives, in accordance with existing law, for the purpose of promoting the development and implementation of the uniform procurement system or for the purpose of promoting the policies set forth in paragraphs (1) through (8) of section 2 of this Act. Such policy directives shall be followed by executive agencies.

[(2) Any policy directives issued pursuant to paragraph (1) may require executive agencies to issue implementing regulations which shall be in accord with the criteria and standards set forth in such policy directives.

[(i) Until the effective date of legislation implementing a uniform procurement system, the Director of the Office of Management and Budget shall deny or rescind the promulgation of any final rule or regulation of any executive agency relating to procurement if the Director determines that such rule or regulation is inconsistent with the policies set forth in paragraphs (1) through (8) of section 2 of this Act or is inconsistent with any policy directives issued pursuant to subsection (h).

[(j) Nothing in this Act shall be construed—

[(1) to impair or affect the authorities or responsibilities conferred by the Federal Property and Administrative Services Act of 1949 with respect to the procurement of automatic data processing and telecommunications equipment and services or of real property; or

[(2) to limit the current authorities and responsibilities of the Director of the Office of Management and Budget.]

AUTHORITY AND FUNCTIONS OF THE ADMINISTRATOR

SEC. 6. (a) The Administrator shall provide overall direction of procurement policy and leadership in the development of procurement systems of the exective agencies. To the extent that the Administrator considers appropriate, and with due regard to applicable laws and the program activities of the executive agencies, the Administrator may prescribe Government-wide policies, regulations, procedures, and forms which shall be followed by executive agencies in the procurement of—

(1) property other than real property in being;

(2) services, including research and development; and

(3) construction, alteration, repair, or maintenance of real property.

(b) The authority of the Administrator under this Act shall not be construed to—

(1) impair or interfere with the determination by executive agencies of their need for, or their use of, specific property, services, or construction, including particular specifications therefor; or

(2) interfere with the determination by executive agencies of specific actions in the award or administration of procurement contracts.

(c) The functions of the Administrator shall include—

(1) providing leadership and resolving differences among the executive agencies in the establishment, development and maintenance of the single system of simplified Government-wide procurement regulations and in the development of simplified Government-wide procurement procedures and forms;

(2) coordinating the development of Government-wide procurement system standards that shall be implemented by the executive agencies in their procurement systems;

(3) providing leadership and coordination in the formulation of the executive branch position on legislation relating to procurement;

(4) providing for a computer-based Federal Procurement Data System which shall be located in the General Services Administration (acting as executive agent for the Administrator) and shall collect, develop, and disseminate procurement data;

(5) providing for a Federal Acquisition Institute which shall be located in the General Services Administration (acting as executive agent for the Administrator) and shall—

(A) foster and promote Government-wide career management programs for a professional procurement work force; and

(B) promote and coordinate Government-wide research and studies to improve the procurement process and the laws, policies, methods, regulations, procedures, and forms relating to procurement by the executive agencies;

(6) establishing criteria and procedures to ensure the effective and timely solicitation of the viewpoints of interested parties in the development of procurement policies, regulations, procedures, and forms;

(7) developing standard contract forms and contract language in order to reduce the Government's cost of procuring property and services and the private sector's cost of doing business with the Government; and

(8) completing action, as appropriate, on the recommendations of the Commission on Government Procurement.

(d) In carrying out the functions set forth in subsection (c), the Administrator—

(1) shall consult with the affected executive agencies, including the Small Business Administration;

(2) may, with the concurrence of the heads of affected executive agencies, designate an executive agency or executive agencies to assist in the performance of such functions; and

(3) may establish advisory committees or other interagency groups to assist in providing for the establishment, development, and maintenance of a single system of simplified Government-wide procurement regulations and to assist in the performance of any of the other functions which the Administrator considers appropriate.

(e) The Administrator may, with the concurrence of the Director of the Office of Management and Budget, deny the promulgation of or rescind any final rule or regulation of any executive agency relating to procurement if the Administrator determines that such rule or regulation is inconsistent with the policies set forth in section 2 or any policies, regulations, or procedures issued pursuant to subsection (a).

(f) Except as otherwise provided by law, no duties, functions, or responsibilities, other than those expressly assigned by this Act, shall be assigned, delegated, or transferred to the Administrator.

(g) The authority of the Administrator under this Act shall apply only to procurements payable from appropriated funds.

(h) Nothing in this Act shall be construed to—

(1) impair or affect the authorities or responsibilities conferred by the Federal Property and Administrative Services Act of 1949 with respect to the procurement of automatic data processing and telecommunications equipment and services or of real property; or

(2) limit the current authorities and responsibilities of the Director of the Office of Management and Budget.

(i)(1) With due regard to applicable laws and the program activities of the executive agencies administering Federal programs of grants or assistance, the Administrator may prescribe Government-wide policies, regulations, procedures, and forms which the Administrator considers appropriate and which shall be followed by such executive agencies in providing for the procurement, to the extent required under such programs, of property or services referred to in clauses (1), (2), and (3) of subsection (a) by recipients of Federal grants or assistance under such programs.

(2) Nothing in paragraph (1) shall be construed to—

(A) permit the Administrator to authorize procurement or supply support, either directly or indirectly, to recipients of Federal grants or assistance; or

(B) authorize any action by such recipients contrary to State and local laws, in the case of programs to provide Federal grants or assistance to States and political subdivisions.

ADMINISTRATIVE POWERS

SEC. 7. Upon the request of the Administrator, each executive agency is directed to—

(1) make its services, personnel, and facilities available to the Office to the greatest practicable extent for the performance of functions under this Act; and

(2) except when prohibited by law, furnish to the Administrator and give him access to all information and records in its possession which the Administrator may determine to be necessary for the performance of the functions of the Office.

RESPONSIVENESS TO CONGRESS

SEC. 8. (a) [(1)] The Administrator shall keep the Congress and its duly authorized committees fully and currently informed of the major activities of the Office of Federal Procurement Policy, and shall submit a report thereon to the House of Representatives and the Senate annually and at such other times as may be necessary for this purpose.

[(2) At the earliest practicable date, but in no event later than one year after the date of enactment of the Office of Federal Procurement Policy Act Amendments of 1979, the Administrator shall transmit to the House of Representatives and the Senate his proposal for a uniform procurement system. Such proposal shall include a full description of the proposed system, projected costs and benefits of the system as proposed, and short- and long-term plans for implementation of the system, including schedules for implementation. At the same time, the Administrator shall transmit a report on the recommendations of the Commission on Government Procurement specified in section 6(d)(1) of this Act.

[(3) At the earliest practicable date, but in no event later than one year after presentation of the proposal described in paragraph (2) of this subsection, the Administrator shall propose to the House of Representatives and the Senate recommended changes in legislation relating to procurement by executive agencies. If the Administrator deems it necessary, these recommendations shall include a proposal for a consolidated statutory base for procurement by executive agencies.

[(4) At the earliest practicable date, but in no event later than the submission of the legislative recommendations described in paragraph (3) of this subsection, the Administrator shall present a proposal for a management system described in section 6(c) to implement and enforce the uniform procurement system.]

(b) [At least 30 days prior to the effective date of any policy prescribed under section 6(h), the Administrator shall transmit to the Committees on Government Operations of the House of Representatives and of the Senate a detailed report on the proposed policy.] *At least 30 days prior to the effective date of any major policy or regulation prescribed under section 6(a), the Administrator shall transmit to the Committee on Government Operations of the House of Representatives and the Committee on Government Affairs of the Senate a report on the proposed policy or regulation.* Such report shall include—

(1) a full description of the policy *or regulation;*

(2) a summary of the reasons for the issuance of such policy *or regulation;* and

(3) the names and positions of employees of the Office who will be made available, prior to such effective date, for full consultation with such Committees regarding such policy *or regulation.*

(c) In the case of an emergency, the President may waive the notice requirement of subsection (b) by submitting in writing to the Congress his reasons therefor at the earliest practicable date on or before the effective date of [any policy.] *any major policy or regulation.*

EFFECT ON EXISTING LAWS

SEC. 9. The authority of an executive agency under any other law to prescribe policies, regulations, procedures, and forms for procurement is subject to the authority conferred in section 6 of this Act.

EFFECT ON EXISTING REGULATIONS

[SEC. 10. Procurement policies, regulations, procedures, or forms in effect as of the date of enactment of the Office of Federal Procurement Policy Act Amendments of 1979 shall continue in effect, as modified from time to time by the issuing offices on their own initiative or in response to policy directives issued under section 6(h) until repealed, amended, or superseded pursuant to the adoption of the uniform procurement system described in section 6 of this Act.]

SEC. 10. Procurement policies, regulations, procedures, or forms in effect on the date of enactment of the Office of Federal Procurement

Policy Act Amendments of 1983 shall continue in effect, as modified from time to time, until repealed, amended, or superseded by policies, regulations, procedures, or forms promulgated by the Administrator.

[AUTHORIZATION OF APPROPRIATIONS

[SEC. 11. There are authorized to be appropriated to carry out the provisions of this chapter, and for no other purpose, $4,000,000 for the fiscal year ending September 30, 1980, and for each of the three succeeding fiscal years; and one-third of the funds appropriated for any such fiscal year shall be made available to the Federal Acquisition Institute for the performance of its functions under this chapter. Any subsequent legislation to authorize appropriations to carry out the purposes of this chapter shall be referred in the Senate to the Committee on Governmental Affairs.]

AUTHORIZATION OF APPROPRIATIONS

SEC. 11. There are authorized to be appropriated to carry out the provisions of this Act, and for no other purpose, $5,000,000 for the fiscal year ending September 30, 1984, and for each of the four succeeding fiscal years.

DELEGATION

SEC. 12. [(a) The Administrator may delegate, and authorize successive redelegations of, any authority, function, or power under this chapter, other than his basic authority to provide overall leadership in the development of Federal procurement policy, to any other executive agency with the consent of such agency or at the direction of the President.] *(a) The Administrator may delegate, and authorize successive redelegations of, any authority, function, or power of the Administrator under this Act (other than the authority to provide overall direction of Federal procurement policy and to prescribe policies and regulations to carry out such policy), to any other executive agency with the consent of the head of such executive agency or at the direction of the President.*

(b) The Administrator may make and authorize such delegations within the Office as he determines to be necessary to carry out the provisions of this chapter.

ANNUAL PAY

SEC. 13. Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following:

"(100) Administrator for Federal Procurement Policy.".

ACCESS TO INFORMATION

SEC. 14. (a) The Administrator and personnel in his Office shall furnish such information as the Comptroller General may require for the discharge of his responsibilities. For this purpose, the Comptroller General or his representatives shall have access to all books, documents, papers, and records of the Office.

(b) The Administrator shall, by regulation, require that formal meetings of the Office, as designated by him, for the purpose of de-

veloping procurement policies and regulations shall be open to the public, and that public notice of each such meeting shall be given not less than ten days prior thereto.

TESTS OF INNOVATIVE PROCUREMENT METHODS AND PROCEDURES

SEC. 15. (a) The Administrator may develop innovative procurement methods and procedures to be tested by selected executive agencies. The innovative procurement methods and procedures tested under this subsection shall be consistent with the policies set forth in section 2. In developing any program to test innovative procurement methods and procedures under this subsection, the Administrator shall consult with the heads of executive agencies to—

(1) ascertain the need for and specify the objectives of such program;

(2) develop the guidelines and procedures for carrying out such program and the criteria to be used in measuring the success of such program;

(3) evaluate the potential costs and benefits which may be derived from the innovative procurement methods and procedures tested under such program;

(4) select the appropriate executive agencies or components of executive agencies to carry out such program;

(5) specify the categories and types of products or services to be procured under such program; and

(6) develop the methods to be used to analyze the results of such program.

A program to test innovative procurement methods and procedures may not be carried out unless approved by the heads of the executive agencies selected to carry out such program.

(b) If the Administrator determines that it is necessary to waive the application of any provision of law in order to carry out a proposed program to test innovative procurement methods and procedures under subsection (a), the Administrator shall transmit notice of the proposed program to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and request that such committees take such action as may be necessary to provide that such provision of law does not apply with respect to the proposed program. The notification to Congress shall include a description of the proposed program (including the scope and purpose of the proposed program), the procedures to be followed in carrying out the proposed program, the provisions of law affected and any provision of law the application of which must be waived in order to carry out the proposed program, and the executive agencies involved in carrying out the proposed program.

EXECUTIVE AGENCY RESPONSIBILITIES

SEC. 16. (a) To further achieve effective, efficient, and economic administration of the Federal procurement system, the head of each executive agency shall, in accordance with all laws, Government-wide policies and regulations, and good business practices—

(1) increase the use of effective competition in procurement by the executive agency;

(2) establish clear lines of authority, accountability, and responsibility for procurement decisionmaking within the executive agency, including placing the procurement function at a sufficiently high level in the executive agency to provide—

(A) direct access to the head of the major organizational element of the executive agency served; and

(B) comparative equality with organizational counterparts;

(3) designate a procurement executive who shall be responsible for management direction of the procurement system of the executive agency, including implementation of the unique procurement policies, regulations, and standards of the executive agency; and

(4) develop and maintain a procurement career management program in the executive agency to assure an adequate professional work force.

(b) The head of an executive agency designated by the Administrator to participate in an interagency group established under section 6(d)(3) shall, to the extent practicable, participate in such interagency group.

STUDIES AND REPORTS

SEC. 17. (a) The Administrator shall conduct studies and issue reports on—

(1) the feasibility and advisability of promulgating Government-wide regulations applicable to suspensions and debarments of recipients of Federal financial assistance; and

(2) the extent of competition in the award of subcontracts by Federal prime contractors including (A) an evaluation of the data available on subcontracts awarded in fiscal 1982 with respect to (i) the source selection method used in awarding such subcontracts, (ii) the type of subcontracts awarded, (iii) the dollar value of such subcontracts, (iv) the size of the subcontractors which were awarded the subcontract (by number of employees), and (v) the geographical location of such subcontractors, and (B) the report shall also include recommendations for improvements, if appropriate, in the extent of competiton in the awarding of subcontracts and in the collection of data on such subcontract awards.

(b) All reports required under subsection (a) of this section shall be completed by April 1, 1984, and shall be submitted to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives not later than April 15, 1984.

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